

HAIGHT, GARDNER, POOR & HAVENS

1100 Market Street, Houston, Texas 77002-7150-39-9202

159623

J. Stephen Buchanan

June 17, 1991

Mr. Charles B. Howland
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Re: 70th and Kingsessing Site, EPA Removal Action

Dear Mr. Howland:

On behalf of Interpool Limited ("Interpool"), and in response to correspondence from the U.S. Environmental Protection Agency, Region III ("U.S. EPA") dated June 10, 1991, the following, as previously stated in our correspondence dated May 7, 1991, constitutes the basis for the position that Interpool should not be named as a potentially responsible party in connection with the 70th and Kingsessing Site, located in Philadelphia, Pennsylvania.

On May 6, 1991, U.S. EPA sent a Notice of Potential Liability to various potentially responsible parties ("PRPs") whom it had identified in connection with the possible environmental removal action on real property located at 70th and Kingsessing, Philadelphia, Pennsylvania (the "Site").

On June 10, 1991, U.S. EPA sent correspondence to five PRPs urging them to discuss among themselves an appropriate response to U.S. EPA's May 28, 1991 Draft Administrative Order by Consent. U.S. EPA stated that the purpose of the negotiation process was to promote discussions concerning the removal of certain abandoned drums located at the Site. The PRPs who received this notice were given until Monday, June 17, 1991 to respond.

This correspondence responds to U.S. EPA's June 10th letter and formally advises U.S. EPA of the position of Interpool.

1. Interpool is not the owner, as stated by U.S. EPA, of one of the two trailers allegedly containing hazardous substances within the meaning set forth in §101(20) of CERCLA, 42 U.S.C. §9601(20) and is therefore not liable under §107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

The plain language of §107(a) clearly defines the scope of intended liability under the statute and the elements of proof necessary to establish it. Interpool is not within the class of

AR100039

Mr. Charles B. Howland
June 17, 1991
Page 3

the container was "lost or stolen" after use by U.S. Lines in April 1984, and prior to October 1986, when it was purchased by U.S. Lines. Further documentation will evidence that Interpool did not have any possession or control of the container nor did it direct the use of same subsequent to its lease to U.S. Lines in 1983.

A-Line Freight Company and Mr. Robert Tannenbaum are the owner and operator of the Site and as such are responsible for properly managing the hazardous substances located on the Site. Based upon the nature of A-Line Freight Company's business and the fact that alleged hazardous substances have been found on its property in trailers, Interpool asserts that the parties most likely responsible for the transportation and disposal of hazardous substances at the Site are A-Line Freight Company and Mr. Tannenbaum.

Interpool has no direct or indirect contractual relationship with any of the above third parties and it asserts that they are "solely responsible" for the transportation, disposal and release of any hazardous substances at the Site. Said third parties are consequently responsible for the removal of such materials from the Site.

3. No evidence has been provided to conclusively show that any materials located in the subject container are indeed hazardous substances under CERCLA.

U.S. EPA's Assessment Report and Analytical Report provided to Interpool on June 10, 1991 fail to state which of the four "A-Line Freight" trailers located on the Site contained the suspected hazardous materials and whether or not any of the four was the subject container.

Therefore, based upon the above, it is Interpool's position that it should not be a party to the U.S. EPA's Administrative Order by Consent and further requests U.S. EPA to reassess its position and remove Interpool from the list of potentially responsible parties in the referenced removal action. A position paper with supporting affidavits and documentation will be

AR100041